

10-15-2003

# Preventing Deadly Conflict: The Role of International Law

Richard J. Goldstone

Follow this and additional works at: [http://digital.sandiego.edu/lecture\\_series](http://digital.sandiego.edu/lecture_series)

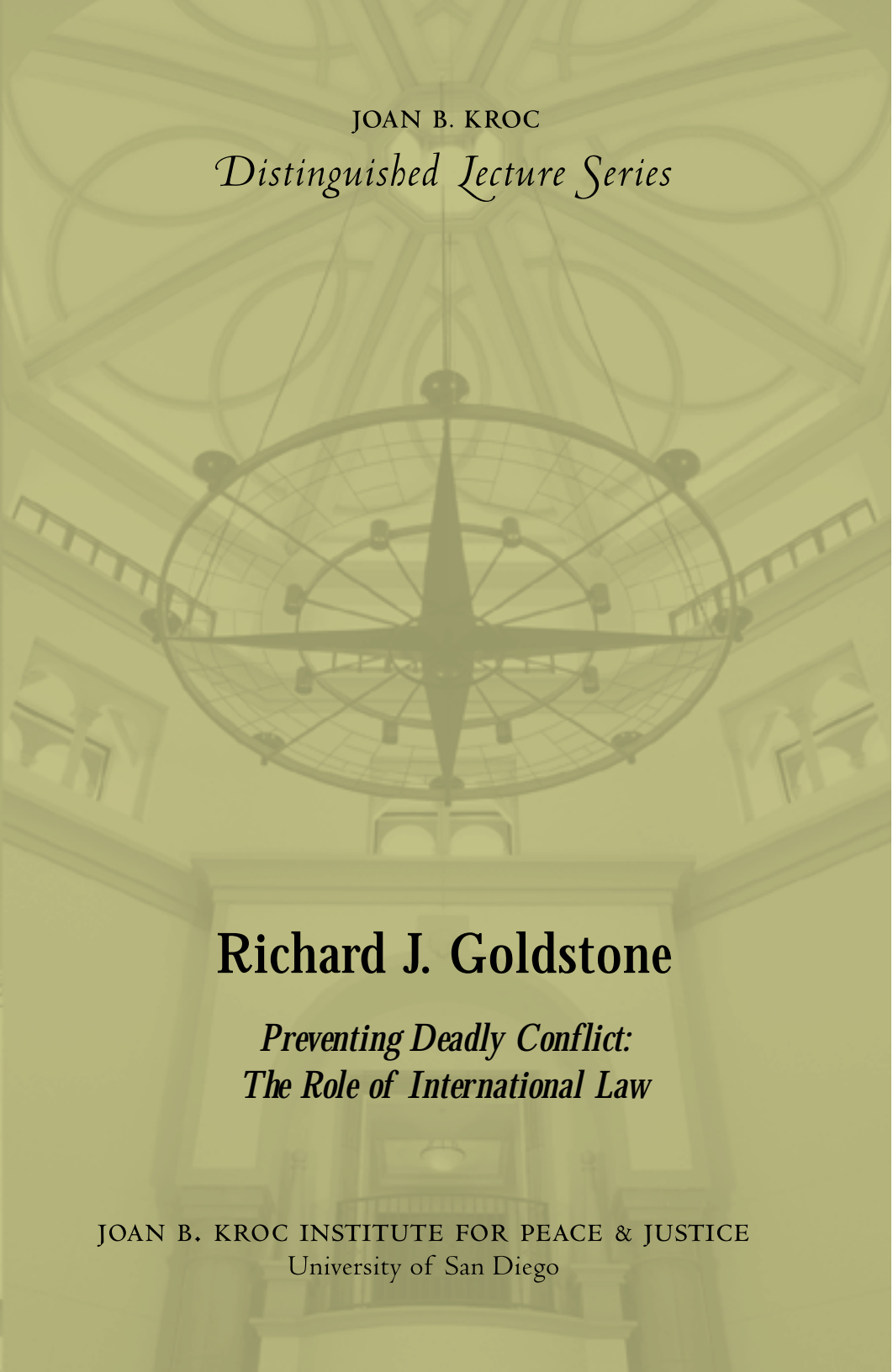
---

## Digital@USanDiego Citation

Goldstone, Richard J., "Preventing Deadly Conflict: The Role of International Law" (2003). *Joan B. Kroc Distinguished Lecture Series*. 29.

[http://digital.sandiego.edu/lecture\\_series/29](http://digital.sandiego.edu/lecture_series/29)

This Article is brought to you for free and open access by the Joan B. Kroc Institute for Peace and Justice at Digital USD. It has been accepted for inclusion in Joan B. Kroc Distinguished Lecture Series by an authorized administrator of Digital USD. For more information, please contact [digital@sandiego.edu](mailto:digital@sandiego.edu).



JOAN B. KROC

*Distinguished Lecture Series*

**Richard J. Goldstone**

*Preventing Deadly Conflict:  
The Role of International Law*

JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE  
University of San Diego



JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE

*Distinguished Lecture Series*

Delivered on the 15th of October 2003 at the

JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE

University of San Diego

San Diego, California

Richard J. Goldstone

*Preventing Deadly Conflict:  
The Role of International Law*

*Fostering Peace, Cultivating Justice, Creating a Safer World*



## CONTENTS

Joan B. Kroc Institute for Peace & Justice	4
Joan B. Kroc Distinguished Lecture Series	6
Biography of Justice Richard J. Goldstone	8
Interview with Justice Goldstone by Professor William Aceves	10
Introduction by Dr. Joyce Neu	24
Lecture - <i>Preventing Deadly Conflict: The Role of International Law</i>	27
Questions and Answers	44
Related Resources	57
About the University of San Diego	60

## JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE



The mission of the Joan B. Kroc Institute for Peace & Justice (IPJ) is to foster peace, cultivate justice, and create a safer world. Through education, research, and peacemaking activities, the IPJ offers programs that advance scholarship and practice in conflict resolution and human rights. The Institute for Peace & Justice, located at the University of San Diego, draws upon Catholic social teaching that sees peace as inseparable from justice and acts to prevent and resolve conflicts that threaten local, national, and

international peace. The IPJ was established in 2000 through a generous gift from the late Joan B. Kroc to the University of San Diego to create an institute for the study and practice of peace and justice. Programming began in early 2001 and the building was dedicated in December 2001 with a conference, “Peacemaking with Justice: Policy for the 21st Century.”

The Institute for Peace & Justice strives, in Joan B. Kroc’s words, to “not only talk about peace, but to make peace.” The IPJ offers its services to parties in conflict to provide mediation and facilitation, assessments, training, and consultations. It advances peace with justice through work with members of civil society in zones of conflict and has a focus on mainstreaming women in peace processes.

The Women PeaceMakers Program brings into residence at the IPJ women who have been actively engaged in peacemaking in conflict areas around the world to document their stories, share experiences with others working in peacemaking, and allow time for reflection on their work.

A Master’s Program in Peace & Justice Studies trains future leaders in the field and will be expanded into the Joan B. Kroc School of Peace Studies, supported by a \$50 million endowment from the estate of Mrs. Kroc.

WorldLink, a year-round educational program for high school students from San Diego and Baja California connects youth to global affairs.

Country programs, such as the Nepal project, offer wide-ranging conflict assessments, mediation, and conflict resolution training workshops.

Community outreach includes speakers, films, art, and opportunities for discussion between community members, academics, and practitioners on issues of peace and social justice, as well as dialogue with national and international leaders in government, non-governmental organizations, and the military.

## JOAN B. KROC DISTINGUISHED LECTURE SERIES

Endowed in 2003 by a generous gift to the Joan B. Kroc Institute for Peace & Justice from the late Joan Kroc, philanthropist and international peace proponent, the Joan B. Kroc Distinguished Lecture Series is a forum for high-level national and international leaders and policy makers to share their knowledge and perspectives on issues related to peace and justice. The goal of the series is to deepen understanding of how to prevent and resolve conflict and promote peace with justice.

The Distinguished Lecture Series offers the community at large an opportunity to engage with leaders who are working to forge new dialogues with parties in conflict and who seek to answer the question of how to create an enduring peace for tomorrow. The series, which is held at the Joan B. Kroc Institute for Peace & Justice at the University of San Diego, examines new developments in the search for effective tools to prevent and resolve conflict while protecting human rights and ensuring social justice.



## DISTINGUISHED LECTURE SERIES SPEAKERS

May 8, 2003	Helen Caldicott, M.D. President, Nuclear Policy Research Institute <i>The New Nuclear Danger</i>
April 15, 2003	Robert Edgar, Ph.D. General Secretary, The National Council of Churches <i>The Role of the Church in U.S. Foreign Policy</i>
October 15, 2003	Richard J. Goldstone Justice of the Constitutional Court of South Africa <i>Preventing Deadly Conflict: The Role of International Law</i>
January 14, 2004	Ambassador Donald K. Steinberg U.S. Department of State <i>Conflict, Gender, and Human Rights: Lessons Learned from the Field</i>
April 15, 2004	General Anthony C. Zinni United States Marine Corps (retired) <i>From the Battlefield to the Negotiating Table: Preventing Deadly Conflict</i>

## BIOGRAPHY OF JUSTICE RICHARD J. GOLDSTONE

Richard J. Goldstone was born on October 26th, 1938. After graduating from the University of the Witwatersrand with a BA LLB cum laude in 1962, he practiced as an Advocate at the Johannesburg Bar. In 1976, he was appointed Senior Counsel and in 1980 was made Judge of the Transvaal Supreme Court. In 1989, he was appointed Judge of the Appellate Division of the Supreme Court. From July 1994 to October 2003, he was a Justice of the Constitutional Court of South Africa.

From 1991 to 1994, Justice Goldstone served as Chairperson of the Commission of Inquiry regarding Public Violence and Intimidation which came to be known as the Goldstone Commission. He was the Chairperson of the Standing Advisory Committee of Company Law from 1984 to 2004. From August 1994 to September 1996, he served as the Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. During 1998, Justice Goldstone was the chairperson of a high-level group of international experts which met in Valencia, Spain, and drafted a Declaration of Human Duties and Responsibilities for the Director General of UNESCO (the Valencia Declaration). From August 1999 until December 2001, he was the chairperson of the International Independent Inquiry on Kosovo. In December 2001, he was appointed co-chairperson of the International Task Force on Terrorism, which was established by the International Bar Association. He is a director of the American Arbitration Association. From 1985 to 2000, Justice Goldstone was National President of the National Institute of Crime Prevention and the Rehabilitation of Offenders (NICRO). He is chairperson of the Bradlow Foundation, a charitable educational trust, and from 1994 to 2003 he was the chairperson of the board of the Human Rights Institute of South Africa (HURISA). Justice Goldstone remains a trustee of HURISA.

His other responsibilities include being the Chancellor of the University of the Witwatersrand, Johannesburg; a member of the Board of its School of Law; a Governor of the Hebrew University, Jerusalem; and President of

World ORT (an international technical and technology training organization). He was a member of the International Panel established in August 1997 by the Government of Argentina to monitor the Argentinian inquiry to elucidate Nazi activities in the Argentine Republic since 1938.

The many awards Justice Goldstone has received locally and internationally include the International Human Rights Award of the American Bar Association (1994) and Honorary Doctorates of Law from the Universities of Cape Town, Witwatersrand, Natal, Hebrew University in Jerusalem, University of Notre Dame, University of Maryland University College, Wilfred Laurier in Ontario, University of Glasgow, Catholic University of Brabant in the Netherlands, University of Calgary, Emory University, and Princeton University. He is an Honorary Bencher of the Inner Temple, London; an Honorary Fellow of St Johns College, Cambridge; an Honorary Member of the Association of the Bar of New York; and a Fellow of the Weatherhead Center for International Affairs of Harvard University. He is a Foreign Member of the American Academy of Arts and Sciences. He was a member of the faculty of the Salzburg Seminar in 1996 and 1998 and co-chaired sessions on International Law in 2001 and 2003. From October to December 2001 and in the Spring of 2004, he was a visiting professor at the School of Law of New York University. For the fall term of 2004, he was a visiting professor at Fordham Law School.

Justice Goldstone is married (wife Noleen) and has two married daughters, Glenda and Nicole, and four grandsons, Jason, Sean, Ben and Jordan.

## INTERVIEW WITH JUSTICE RICHARD J. GOLDSTONE

The following is an edited transcript of an interview with Justice Richard J. Goldstone by Professor William J. Aceves<sup>1</sup> that took place at the Joan B. Kroc Institute for Peace & Justice on October 15, 2003.

G = Justice Richard J. Goldstone

A = Professor William Aceves

---

A: In your book For Humanity: Reflections of a War Crimes Investigator, you wrote that your earliest memories of injustice came from your experiences at the University of Witwatersrand.<sup>2</sup> You wrote how black students were forced to live in the squalor of the black townships while the white students were able to live in the comfortable suburbs. And you described your feelings of shame and sense of frustration at the injustices of the apartheid system.

G: It was a turning point. It really was.

A: Did something happen at the university that made you realize the injustices of the apartheid system?

G: It was just the unfairness of being able to make friends on the campus and yet the minute we walked out of that campus, we were going into our own very different worlds. And it was not a world of choice. Black friends had to go back to apartheid oppression. And it was just the embarrassment and frustration and anger that I felt at the unfairness of it.

A: Do you have any recollection of those feelings and emotions before the university?

---

<sup>1</sup> Professor Aceves is Professor of Law and Director of the International Legal Studies Program at California Western School of Law in San Diego, California. He is the principal author of the 2002 Amnesty International USA report on torture and impunity in the United States.

<sup>2</sup> Richard J. Goldstone, For Humanity: Reflections of a War Crimes Investigator (Yale University Press 2000).

G: Well, I was aware of apartheid, but it had not affected me yet. I think one needs to be touched personally.

A: So it was really at the university when this finally came together for you.

G: Right. That was exactly what happened.

A: How important is it for young people—students in elementary school and high school—to receive human rights education?

G: I think it is crucially important. For example, there is an organization called Facing History and Ourselves. It was founded by a school teacher in Boston and it has several chapters throughout the United States. It uses the Holocaust to teach tolerance. They have taught well over two million boys and girls throughout the United States. They use the South African Truth and Reconciliation Commission as a teaching tool. Bill Moyers did a wonderful documentary for them some years ago that was shown on PBS. For them, I have given lectures and answered questions at secondary schools in Boston, Los Angeles, Manhattan, and in Memphis.

I have seen the importance for young Americans, particularly minority students, to discuss their concerns about injustice and discrimination. My talking about these issues has been a form of empowerment for them. For the first time—it has been obvious to me—for the first time in their lives, they have been able to talk about their frustrations openly in front of their peers and ask questions about whether America has done enough in the area of reconciliation and acknowledgment of slavery. It is very important, and I think that it has been a learning experience for them and, maybe even more importantly, for their white friends to suddenly be faced with the reality that there is something lurking there that they did not know anything about. So, I think education is critical for all ages, especially in a multi-racial society.



**A: Can education overcome the prejudice and discrimination that young people may experience in their own lives?**

G: I think it can. You know, I do not think one can generalize in this area. It is going to be different for every person, every family, in every city and, in some cases, I think it depends on how intelligent the parents are and how much the children respect their parents. It depends on relationships. But certainly, I think education can overcome prejudice and discrimination.

Generally, young people do not articulate their feelings when they are the victims of discrimination. Parents are embarrassed to raise these issues. They are possibly embarrassed by their own lack of activism and their own lack of openness. So education is crucially important.

**A: So education is not just necessary for understanding the past, it is also necessary for understanding the present.**

G: And the future.

**A: As a student in South Africa, you were a member of several student organizations at the university—the Students' Representative Council and the National Union of South African Students. Did you consider yourself a student activist?**

G: Oh yes. If I did not, the security police would have made me think that anyway.

**A: How important were these organizations in developing your sense of justice?**

G: Well, very much so. I was driven in that direction by my reaction to what was going on at the university and the country in general. It was in the late 1950s and early 1960s. At that time, there was a lot of student activism here in the United States. I remember at that time Allard Lowenstein was the president of the United States Student Association. There is, in fact, a square named after him opposite the United Nations in New York. He was very

involved with the anti-apartheid campaigns and student activism generally. There was really an international uprising by students in many countries over human rights abuses and, in particular, over human rights abuses in South Africa.

**A: What is it about educational institutions that raises awareness of injustice in the world?**

G: Well, I think it is the atmosphere of the university—the openness, research, and academic freedom. Many faculty feel strongly about injustice. This is why oppressive leaders do not like universities. They do not like academic freedom. I remember as a young student of nineteen going to Ghana, Nigeria, and Sierra Leone. Ghana had been independent for only six months and President Kwame Nkrumah was already withdrawing scholarships from students who were protesting against some of his policies. It is the students and the media who are usually the first victims of oppressive leaders.

**A: In your book, you discuss how you struggled with the decision of whether to accept an appointment to the Transvaal Supreme Court in 1978 and, thereby, “join the establishment.” Indeed, your career in South Africa—from your work as a senior counsel to your appointment on the Transvaal Supreme Court—is indicative of an engagement strategy. Was that an easy choice?**

G: No, it was a very difficult choice, but not because of the political implications. It was a difficult choice from a moral point of view. I had to take an oath to uphold laws that I found abhorrent. And this was very difficult. As I mentioned in my book, what made it easier and certainly tipped the balance was the fact that there were public interest law firms and human rights law organizations that had begun using the courts. Some of my close friends were involved and encouraged me to accept an appointment on the bench because these organizations needed sympathetic judges. My attitude was that as long as the courts were being used to establish rights for the black majority, there was no reason not to be there.

**A: And so it was a tough decision but was it the right decision to make?**

G: In retrospect, I am pretty comfortable with my decision.

**A: This raises an interesting question about the best approach for addressing human rights abuses. Engagement and isolation are two very different strategies for responding to regimes that abuse human rights. During the apartheid era, many countries around the world struggled with how to treat the South African government. Is engagement better than isolation?**

G: Well, I think so. Certainly one rule is not to remain silent, regardless of the effect that it may or may not have in making things better. Many anti-apartheid politicians were strongly against sanctions. They were against sanctions because they felt that sanctions were only going to hurt the people they were intended to help. Sanctions were not going to hurt the whites, bureaucrats, and businessmen and women who were benefiting from the apartheid system. Practically speaking, they were correct. However, I disagree with this approach. As long as black leaders wanted sanctions, I do not think it was appropriate for whites to object on behalf of the blacks who were calling for them. And there is no question that sanctions helped. The pariah status that was given to South Africa was a crucial ingredient in the struggle to bring down apartheid. I think South Africa is one of the few examples of where sanctions really worked. When borders are porous, the main effect of sanctions is often to make crooks rich rather than to bring down evil politicians. Again, I think it is difficult to generalize. I think one must be country specific.

**A: Why do you think the sanctions were successful in South Africa?**

G: Because it was a multi-faceted campaign. For example, there was a sports boycott. South Africa is a sports-crazy country and the fact that we were boycotted and could not participate in international sporting events was a huge blow to many white South Africans. Also, white South Africans did not enjoy the pariah status. It was an embarrassment to have a South African

passport when visiting anywhere in Europe or North America. We could not obtain visas to travel on our own continent. In addition, there was the intellectual boycott, with which I disagreed because it was merely punishing the people who were at the forefront of opposition to apartheid. You know, these were all difficult moral and political choices.

**A: You have participated in so many important cases—from striking down prosecutions under the Group Areas Act in South Africa to filing the case against Dusan Tadic in the International Criminal Tribunal for the former Yugoslavia. Of all the cases you have worked on, which case are you most proud of?**

G: Well, I think it would undoubtedly be the Group Areas Act case.<sup>3</sup> To me, that case demonstrated the power of the law and the good that can come from a good decision. Quite frankly, I did not anticipate that the decision would have the drastic effect that it had, but it is a good example of being able to do the right thing.

**A: As you consider your judicial career during the apartheid era, do you think you were an activist judge?**

G: Moderately. You know, I think it depends. Looking back, I do not think I had many choices. I do not think I had opportunities of doing something to bring down apartheid that I did not take advantage of. But I never did anything in a way that was inconsistent with what I considered to be my judicial duty. There are many people who would probably have labeled me as a conservative judge. So it depends on your point of view.

---

<sup>3</sup> The Group Areas Act allowed the South African government to decree that certain areas were to be reserved for the exclusive use of people of one color. Persons who violated the Act were subject to criminal sanctions.

**A: In the 1980s, President Botha proclaimed a set of emergency laws that authorized detention without trial and allowed for indefinite detention. In 1985-86, you spent six months visiting hundreds of these detainees in South African prisons. What impact did the indefinite detention policies have on the detainees themselves?**

G: Their impact was absolutely drastic. To be kept in detention indefinitely is the cruelest punishment. It is really a form of torture. I would prefer a five-year sentence to being kept for five weeks in detention without trial and without ever knowing if and when I was going to be released. This is why I really anguish over the people in Guantanamo Bay.<sup>4</sup> And this is why the high suicide rate in Guantanamo Bay does not surprise me.

**A: You actually went in and spoke with many of the detainees in South Africa. Was it their lack of knowledge of how long they would be detained that made their detention intolerable?**

G: And the lack of knowledge as to what was happening to their families. I recall one father who broke down in anguish during our meeting. The night he was detained, he and his wife were discussing which school their son should go to, their oldest child, a little boy of six. They were living in Soweto. It was killing him not knowing what decision his wife had made on her own without his participation.

Detainees were not allowed to contact their families until I started agitating for it and arranging family visits. With the help of NICRO [National Institute for Crime Prevention and Rehabilitation of Offenders], a nongovernmental organization, I was able to arrange literally thousands of visits for people in detention.

---

<sup>4</sup> Guantanamo Bay is the U.S. military base in Cuba where the U.S. operates a prison camp for the detention of people whom the U.S. has named as "enemy combatants" in the war on terrorism.

**A: Since the tragedy of September 11th, indefinite detention has been used with increasing frequency in the United States and other democratic countries. What lessons can the United States learn from the South African experience with respect to such detention policies?**

G: South Africa was an oppressive, quasi-police state. I would have thought that United States' values were completely inconsistent with that sort of conduct. And yet, it is amazing how quickly Guantanamo Bay has dropped off the television screen and the newspapers.

**A: When democracies face serious challenges, such as terrorism, they often resort to many of the same policies that are practiced by totalitarian regimes. Are you surprised by this?**

G: Well, I suppose I should not be surprised. It is not the first time and it is not the last time it will happen. What disappoints me is how long it is lasting. I can understand it in the immediate aftermath of September 11th. Some people in the United States were really living in tremendous fear. As we noted in the IBA [International Bar Association] report, I accept absolutely that a government's prime obligation and duty is to provide for the security of its citizens.<sup>5</sup> But it is disappointing to me that governments, not only the United States but also the United Kingdom, India, and to a lesser extent, South Africa, are passing really draconian legislation without justification. It is not going to help. What concerns me is that it is subverting the values which have made democracies what they are. And, in a way, it is a gift to the terrorists whose main motivation is to challenge democracy as a way of life.

**A: So these restrictive policies are not simply human rights violations. Are they also counterproductive to democracy?**

G: Security has not improved because of these policies. It is a question of

---

<sup>5</sup> On October 3, 2003, the International Bar Association released the report "International Terrorism: Legal Challenges and Responses." Justice Goldstone was a Co-Chair of the IBA Task Force on International Terrorism that wrote the report.

balance. I think policing authorities need greater powers in modern times. International criminals—which is what I prefer to call terrorists—whether they are violent or engaged in money laundering or something else, are using modern technology for criminal purposes. And I think the police need to be armed in a way that they can meet the challenge. But that does not justify holding people without trial, conducting secret deportation hearings, or establishing military commissions without the right of appeal to the civil courts. I am objecting to the Executive acting above the law and without any oversight by judicial review. That is just not the way a democracy should operate.

**A: South Africa presents an interesting irony for human rights—it is through the injustices of the apartheid system that some of the more innovative mechanisms for the protection of human rights were established—from the Goldstone Commission on Public Violence and Intimidation to the South African Truth and Reconciliation Commission. Are these South African mechanisms viable models for other countries struggling with human rights abuses?**

G: In oppressive societies, yes, but not in democracies. This is the irony. The powers that I had on the Goldstone Commission would be unconstitutional in a democracy: searching and seizing or interrogating people without the intervention of a court. Such acts are unacceptable in a democracy. But they were necessary in South Africa at that time. But again, I think these issues are country and case specific.

**A: Can the model of the Truth and Reconciliation Commission be replicated in other countries that have experienced human rights abuses?**

G: No, I do not think one can replicate the South African model. Again, I think one has got to look at the specifics of the country. We learned a lot from the Chilean Truth and Reconciliation Commission, which operated in a very different political climate. In Chile, General Augusto Pinochet was still in control of the army. President Patricio Aylwin was constrained to have a very limited kind of truth commission—limited to disappearances, no public hearings, no naming

of names. And yet, it helped; it was a lot better than nothing. In South Africa, we were lucky. We were able to have the fullest kind of truth commission, all in public, including television and radio coverage. I do not know of any other country where one could have replicated that kind of truth commission.

**A: Perhaps the most controversial aspect of the Truth and Reconciliation Commission was the Committee on Amnesty. There appears to be some consensus that the amnesty option was necessary.**

G: The amnesty was a political compromise. If Nelson Mandela would have had his way, there would have been Nuremberg-style trials for Frederick de Klerk and his apartheid colleagues and for the police and army generals. If Mandela would have had his way, there would have been those trials. If de Klerk would have had his way, there would have been blanket amnesty, not even a truth commission, just blanket amnesty as Pinochet did in Chile twenty years ago. So, amnesty was a political compromise. No blanket amnesty but no Nuremberg-style trials. Rather, we had a truth commission that could provide discreet amnesties in return for confessions. It was a unique kind of truth and reconciliation commission. It may be transplantable to a greater or lesser extent to other countries.

**A: Without the amnesty option, do you think the transition to democracy would have succeeded in South Africa?**

G: I think the democratic transition would have succeeded without it, but I do not think that as much truth would have come out. There would not have been the drama that convinced whites that terrible things had been done. It may be post-hoc thinking on my part. I do not know whether I have said this before, but I believe the greatest benefit of the Truth Commission was the truth telling. In that area, the Committee on Amnesty played a crucial role in getting some of the worst scoundrels—criminals in the apartheid system—to come out and confess.



**A: How do you explain the importance of national reconciliation to the widow who lost her husband or to the child who lost his parent? How do you justify national reconciliation over individual grief?**

G: I think one has to explain that the choice was not between prosecution and amnesty. The choice was between amnesty and nothing at all. There would not have been prosecution without the Truth Commission. The evidence was not there. Even if there was evidence, South Africa did not have the manpower to prosecute anyway. You could not have tens of thousands of trials. I sympathize very much with victims who may be frustrated and angry that amnesty was granted. However, I would ask them, if they had to choose between not knowing anything and knowing something, what would they choose? You would get different answers from different people.

**A: Are you satisfied with the outcome of the truth and reconciliation process in South Africa?**

G: Generally speaking, yes. I accept the criticisms of the system, but there is no human device that is perfect. And I have no doubt that we are a much

healthier and a much better society because of the Truth Commission.

**A: You have two children and four grandchildren. Have you left them a better world than the one in which you were born?**

G: In South Africa, without question. It is a joy to live in a country that is free and democratic. It is just wonderful to see the confidence everybody has and how people are mixing. My grandsons never knew apartheid. My oldest grandson is ten and he cannot understand how people could have lived in that system. He plays football with black children. It has all been taken for granted very quickly. The evil of apartheid is staggering to innocent people who were not involved in it.

**A: You are a judge on the South African Constitutional Court. How often do you consider foreign jurisprudence in your decisions?**

G: In just about every case we have. Even South African judges during the apartheid era did that and we did it for a peculiar reason. Our common law is Roman-Dutch, which is a stagnant system because it is not practiced anywhere other than in former Dutch colonies. It had to be updated so we looked to foreign systems to see what was happening. Our commercial law is all Anglo-American so I looked at English law as well as American, Canadian, and Australian law to hone our thinking skills and to find inspiration. Until 1994, South Africa did not have a Constitution so we had no constitutional tradition or precedent. It was obviously essential to look abroad, especially as the drafters of our Constitution borrowed from Canada, the United States and, to a lesser extent, Germany. The decisions of those courts on constitutional issues are directly relevant. They are not binding, but they can be particularly persuasive.

Next year, I am going to teach a course at New York University Law School that is called "Comparative Constitutional Law: The South African Experience" and I have taught at American summer schools in Europe for several years. I enjoy seeing how American students learn more about their own system and their own Constitution by looking at other legal systems.

**A: The United States has expressed its disapproval of the Rome Statute of the International Criminal Court. It has “unsigned” the Rome Statute. It has entered many bilateral agreements with countries to ensure that U.S. personnel are not surrendered to the Court. How would you address some of the concerns expressed by the United States?**

G: Well, first let me say that the U.S. concerns are irrational. I say this very seriously. I think the American concerns are irrational. The fears of bias, of runaway prosecutors, this is just nonsense. It has always been nonsense and now it has been proven to be nonsense with the election of sensible, reputable judges and sensible, experienced prosecutors. But apart from that, an international and professional prosecutor's office cannot have an unprofessional and improper agenda and get away with it; it would be made public in twelve hours. When I was in The Hague, I had Americans, Russians, Chinese, Pakistanis, South Africans, you name it—people from forty countries. If we had expressed an anti-Serb bias or anti-Croat bias, it would have been denounced very quickly. The professionals, whether they were investigators, lawyers, or computer technicians, from America or any of the other countries, would not have been prepared professionally to be associated with that sort of organization. And the tragedy is that there are no Americans in high positions in the International Criminal Court, although there still may be. The best way of reassuring the United States is by having Americans involved in the process and I am sure that will happen.

**A: Until recently, the International Criminal Tribunals for the former Yugoslavia and Rwanda shared a single Prosecutor. This year, the United Nations Security Council decided to establish separate Prosecutors, one for each Tribunal. Do you agree with this decision to split the prosecutorial responsibilities?**

G: I do. I think that from a practical point of view, it was very difficult to run both tribunals from The Hague. I think as many trips as a Prosecutor makes to Arusha, Tanzania, it is not the same thing. It is a visit; it is not going to your own office. I supported the original decision to have a single Prosecutor because it was important to have common practices for both Tribunals. It was important to avoid unfortunate comparisons being made between the

European tribunal and the African tribunal and vice versa. But now, judges of the Rwanda Tribunal sit on the common Appeals Chamber. Earlier, the Appeals Chamber consisted only of judges of the Yugoslavia Tribunal. I think the time was overdue to establish separate Prosecutors.

**A: The United States has expressed a desire to have both International Criminal Tribunals finish their work within the next few years. Do you have any concerns about this move to end the work of the Tribunals?**

G: I'm critical of the Tribunals participating in putting time limits on their own work. If the United Nations Security Council wants to do it, that is a political decision that the Security Council is entitled to take. But if I was involved in the Tribunals, as a judge or a prosecutor, I would say we are going to be here for as long as we have to be here and we are going to be here until our cases are finished and until the appeals are finished. I am not going to put any time limits on this work. If they pick up Radovan Karadzic or Ratko Mladic next year, it will throw these estimates right out. I would not have participated in these discussions.

**A: You have worked in so many different areas in international human rights and criminal justice. How would you explain your success and longevity in the field of international human rights?**

G: I think coming from South Africa has been crucial. In recent years, I think South Africa has demonstrated what can be done in this area. Nelson Mandela is the epitome of that. In addition, I think South Africa is seen as neither European nor American. Thus, it has an objectivity and that perceived objectivity is useful. And, I suppose that I have been in the right place at the right time. It is all a matter of timing.

**A: Any individual qualities?**

G: I think possibly patience and an ability to make people feel comfortable.

**A: Thank you Justice Goldstone.**

## INTRODUCTION BY DR. JOYCE NEU, EXECUTIVE DIRECTOR OF THE JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE

It is now a real pleasure to introduce Justice Richard Goldstone. Justice Goldstone is an extraordinarily gifted, passionate, and humble man. As he wrote in his forward to Martha Minow's book, Between Vengeance and Forgiveness, "one must realize that people anywhere have the potential for evil on a massive scale, and that all victims, whoever they may be, need the opportunity to heal." Justice Goldstone has spent his life dedicated to preventing such evil and to ensuring that victims have a voice and a chance to heal. According to an interview a number of years ago, Justice Goldstone said that he wanted to be a lawyer as long as he could remember. That is the road that he pursued, from graduation from the University of Witwatersrand to a legal career at the Johannesburg bar.

He became a judge at the Transvaal court in 1980. In 1989, he was appointed judge of the appellate division of the Supreme Court and from July 1994 until the 26th of this month, his birthday, he has been a justice of the Constitutional Court of South Africa. Justice Goldstone served as Chairperson of the Commission of Inquiry regarding Public Violence and Intimidation from 1991 to 1994 that came to be known as the Goldstone Commission. The Commission's mandate was to investigate and report on the causes of political violence and intimidation plaguing South Africa.



The Commission was set up as part of a peace accord that was brokered in September of 1991 and that held 142 public inquiries on incidents of violence.

From 1994 until 1996, Justice Goldstone served as the Chief Prosecutor of the United Nations International Criminal Tribunals for the Former Yugoslavia and Rwanda. He was the first Chief Prosecutor of the first war crimes tribunals since Nuremberg and helped set a precedent that crimes against humanity and genocide will no longer go unpunished.

From August 1999 to December 2001, Justice Goldstone was the Chairperson of the Independent International Inquiry on Kosovo. The Commission of Inquiry was tasked with information gathering about the Kosovo conflict and presenting a conscientious and objective analysis of the events in Kosovo from the time of the revocation of its autonomy in 1989 through 2000.

In December 2001, Justice Goldstone was appointed co-chair of the Task Force on International Terrorism, which was established by the International Bar Association. That Task Force released its report just this last Friday at the National Press Club in Washington.

As is fitting for his distinguished career, Justice Goldstone has received many awards including the International Human Rights Award of the American Bar Association. In your program this evening, you have a list of the many honorary doctorates he has received from universities in South Africa, Canada, Europe, and the United States. Justice Goldstone, we are happy to say, also serves on the Institute for Peace & Justice's International Council.

In 2004, he will be a visiting professor for the spring term at New York University's Law School and for the fall term at Fordham Law School and we

are delighted that he is considering spending a semester in residence at the Institute for Peace & Justice and the School of Law at the University of San Diego in the fall of 2005. Justice Goldstone is married to Noleen Goldstone and they have two married daughters and four grandsons. I would like to recognize and thank Mrs. Goldstone for being with us this evening.

Commenting on his nomination to serve on what became known as the Goldstone Commission in South Africa, Justice Goldstone said, "I think the government knew that I wasn't going to be party to a cover up and that anything I found would be made public, even though it had to be made public under the law through the president. But I never really had any serious opposition, probably more because the powers knew that it wouldn't work. But, in fact, it was a fairly good cooperative relationship that I was able to build, not only with the government, but obviously also with the African National Congress."

A commitment to truth and justice has characterized his career and his personal traits of honor, integrity, and empathy have permitted Justice Goldstone to achieve what few people have—the capacity to bring people together, sometimes victim and victimizer—to achieve a level of agreement that permits all parties to move forward while ensuring that justice is done. Justice Goldstone embodies what Mrs. Kroc envisioned for this Institute and for this lecture series. In fact, he is a person who treats all people with dignity, with fairness, and with justice and he has helped us build a more peaceful world. It is an honor to introduce Justice Richard Goldstone.



Richard J. Goldstone



Good evening. Thank very much for your very gracious and generous introduction. And more importantly, thank you for inviting me back to this beautiful institute, the Joan B. Kroc Institute for Peace & Justice. It was my great privilege to meet Mrs. Kroc at the dedication ceremony in December of 2001. Anybody who met her couldn't but be struck by her dignity, her concern for her fellow beings, and for peace and justice. It is a great regret that I have that she is no longer with us. I have no doubt however that her spirit lives on in this Institute and in many other good things that she did for people in the United States and around the world. I think we should rejoice in her memory. It is a sad week for San Diego and for humankind, but at the same time, it is a week for rejoicing in her memory and in the good works that she wrought for so many people around the world.

Deadly conflict. What a horrible thought and what a horrible concept it is. The international community was brought to a fork in the road for humankind at the end of the Second World War. The horrors of the Second World War shocked the conscience of all of humankind when the facts became known during the early years of the 1940s and the facts that poured out which had been kept from people and which had been ignored in many ways because they were embarrassing to many people towards the end of World War II. And that fork in the road was a compelling reason for the international community to prevent a recurrence, a repetition of the horrors of World War II. And it was with that background that the United Nations organization was born in 1945. Of course the United States of America played the leading role in shaping the United Nations.

I needn't tell this audience about the signal and crucial role that was played by Mrs. Eleanor Roosevelt in the drafting of the Universal Declaration of Human Rights, which had an effect in the world far beyond the dreams of Mrs. Roosevelt and the other people who were involved in that endeavor. The fact is that it gave birth in the 1960s to a plethora of international conventions dealing with human rights, including women's rights, and conventions outlawing racial discrimination. It really changed the world and what was an aspirational document gave birth to the international legal norms

that have played such a significant role in post-colonialism and in the spread of human rights and democracy around the world. Indeed, in my own country, the Universal Declaration of Human Rights was really the bible of the African National Congress, in particular, and other liberation movements in South Africa. The Freedom Charter, which was drafted in 1956 in South Africa, was modeled on the Universal Declaration of Human Rights.

The basis of the United Nations charter recognized two fundamental principles. The first was the sovereignty of nations in terms of which national governments were sovereign and that the international community and other governments had no right to interfere and intervene in what were referred to as the internal affairs of sovereign nations. The second fundamental principle enshrined in the United Nations charter is that military force was not to be used save in two situations. Firstly, it could be used with the authority of the United Nations Security Council under Chapter Seven of the United Nations Charter only when it was necessary as a last resort to remove a threat to international peace and security. That was one way in which military force was legal. The second was in self-defense, because the founding members of the United Nations recognized that countries had to have the right to defend their own borders and their own citizens against imminent attack. The United Nations Charter recognized this as the second case in which the use of military force would be legal.

And this was a very limited exception because it provided that where a country acted in self defense, it was obliged immediately to report that fact to the Security Council to enable the Security Council then to take over the endeavor of protecting whichever country it might be from attack. That's what the Charter provided, and of course it was accompanied by the veto power of the permanent membership of the five major nations at the end of World War II: the United States, the United Kingdom, France, Russia, and China. Each of the five permanent nations was given this veto power.

Since World War II, there have been huge developments in the law of war or, as it came to be known, humanitarian law. After each major war, the

International Committee of the Red Cross summoned to Geneva representatives of all the major nations around the world to update the Geneva Conventions. The law always acts in retrospect. The law always has to catch up with the facts on the ground. That must be, because lawyers have no more prescience than anybody else and cannot foresee the future and cannot foresee developments on the ground. After the First World War, the Geneva Conventions had to be updated to take care of air wars. In the 19th century, there was no such thing as airplanes and there was no need to have laws dealing with war from the air. After the Second World War, with the horrors of the Holocaust and the other criminal acts of the Nazi leaders in Germany, the Geneva Conventions had to be updated. In 1949, new war crimes were defined, called the grave breaches of the Geneva Conventions. The Genocide Convention was drafted. The word “genocide” was invented to describe what had been unthinkable—a plan to completely eradicate, to kill a whole people or part of a people—what a horrible concept, what a horrible crime that had not been thought of even by science fiction writers before the Second World War.

How have these laws fared? Unfortunately, as I have indicated already, not too well. The Geneva Conventions, the law of war, humanitarian law, was designed to protect innocent non-belligerents, innocent civilians, and prisoners of war. The idea, and it's perhaps an old-fashioned idea, was that armies should fight against armies and not against innocent civilians. I remember at the dedication of this Institute referring to statistics, which were then fairly new, from a think-tank in Sweden. In the First World War, the number of civilians killed in comparison to soldiers killed was about eight to one. For every one civilian, eight soldiers lost their lives in the First World War. In the Second World War, it was one to one. For every soldier killed, a civilian was killed. That shouldn't surprise anyone if you think of the bombing of London, of Coventry, of the return attacks, the fire bombing of Dresden and other German cities, if you think of the atom bomb being dropped on two cities in Japan, on Nagasaki and Hiroshima. These were intentional attacks on innocent civilians living in their homes in cities, contradictory to the idea that was enshrined in the Geneva Conventions of war crimes being defined as attacks on innocent civilians. In the Korean War, it

became eight to one, eight civilians to every soldier killed in that war. In the Vietnam War, and in something like over 100 civil wars since the Second World War, 90% of the people who have been killed were civilians. More than 100 million killed in civil wars since 1945 have been innocent civilians.

Governments and military leaders have not taken international humanitarian laws seriously. They have complained when it has been their citizens who have been on the receiving end but they haven't hesitated in many cases to go the other way.

I referred earlier to the sovereignty of nations that had been enshrined in the United Nations Charter. The idea was that governments could not interfere with other governments with respect to their internal affairs. Perhaps the best early illustration of reliance on that doctrine was its call to aid by South Africa. Soon after the end of World War II, the Permanent Representative at the United Nations of India complained about the manner in which Indians in South Africa were being oppressed. And the South African government could turn around under the Charter and say, “This is not your business. The way we treat or mistreat people is our business. It's our internal affair. It's got nothing to do with you.”

Fortunately, the international community didn't accept that. The anti-apartheid campaign grew and became an international human rights movement. That was the beginning of piercing the sanctity of national sovereignty of nations and it grew in the human rights arena. It became more and more unacceptable for governments to hide behind their sovereignty and object to interference from governments who complained about the way in which those governments treated their citizens. And again, it was the United States that led this movement to pierce national sovereignty. It's ironic in a way because the United States, more than any other nation, has regarded its own sovereignty as sacrosanct and has objected to other nations looking over the shoulder of American leaders. It's that ambivalence that one sees in the foreign policy of the United States for well over a century. But it was the United States that led this movement to protect the human rights of innocent civilians in many countries around the world, including my own.

It was the United States that led the movement to set up the United Nations ad hoc criminal tribunals for the former Yugoslavia and Rwanda. Many people I'm sure in this room will remember the campaign waged by Madeleine Albright when she was the ambassador of the United States at the United Nations. As the first Chief Prosecutor of those tribunals, I can give personal testimony to the fact that without that support, without the human and financial resources of the United States, those tribunals would not have been set up and, having been set up, would not have succeeded to the extent that they have succeeded.

While all this was going on, there was also a growth of the recognition of universal jurisdiction—the idea that criminals should be brought to court, should be brought to justice anywhere in the world if they committed crimes of the magnitude of genocide and crimes against humanity and the most serious war crimes. Before the Second World War, universal jurisdiction, this idea of jurisdiction being conferred on national courts, not because of the place where the crime was committed, but because of the horrible nature of the crime, was only recognized for pirates. Pirates didn't commit their offense in any country; they committed them on the high seas. If it weren't for universal jurisdiction, if pirates could not be brought to court in any country, they would have had impunity. They would have gotten away with their crimes; there would be no court that could bring them to justice.

That idea of universal jurisdiction became extended. In the Geneva Conventions it is the obligation of any country to investigate and indict any person who is suspected of committing a grave breach of the Geneva Conventions, no matter where committed. If the country refuses or cannot do this, its obligation is to hand the person over to a country that is able and willing to prosecute those grave breaches of the Geneva Conventions.

The first international convention recognizing universal jurisdiction was, in fact, the Apartheid Convention of 1973. The United Nations General Assembly agreed to the convention that declared apartheid in my country to be a crime against humanity, almost completing the circle that began with the

response to Nazi Germany. Anybody who was suspected of the crime of apartheid could be brought to court under the Convention in any country that ratified the Convention. Unfortunately, the major western countries abstained when it came to a vote and they did not ratify it. I have little doubt that apartheid would have died at least a decade earlier than it did if that convention had been taken seriously.

In 1984, universal jurisdiction was recognized in the Torture Convention. That had a much more practical outcome with the arrest in 1998 of General Pinochet at a London clinic at the request of a Spanish judge for crimes committed almost 20 years before in Latin America. Even international lawyers were shocked that this could happen, but it did and it had a dramatic result.

It's little noticed that there are now 16 international conventions dealing with international terrorism. Of the 16, 13 antedate September 11, 2001. Those international conventions began in the 1970s: conventions outlawing airplane hijacking, there are three of them, and conventions outlawing the piracy and taking over of ships on the high seas in reaction to the Achille Lauro incident many years ago. Those conventions, and some since 9/11, all recognize universal jurisdiction. An airplane hijacker is amenable to the justice of the courts of any country, no matter where the hijacking took place. If the hijacking takes place in the United States, the culprits, if they end up in South Africa, are amenable to the courts of South Africa. Obviously countries have to pass domestic laws to do this and many countries have done so.

It was on this basis of recognizing international jurisdiction that the ad hoc tribunals for the former Yugoslavia and Rwanda were set up. Because, think about it, here you have at The Hague an international tribunal for the former Yugoslavia. People are amenable to justice in The Hague court for crimes committed many, many hundreds, if not thousands, of miles from Holland. People are amenable to justice in Arusha for genocide committed on the people of Rwanda in 1994. This is an extension of jurisdiction outside the borders of the country in which the crime has been committed.

It makes sense, doesn't it, that people who commit those sorts of crimes should not be permitted to live in freedom if they leave their own borders. And it has a knock-on effect. General Suharto, the former head of Indonesia, some years ago had to cancel medical treatment in Germany because he feared that there was a warrant for his arrest at the Frankfurt airport. In my own country, Haile Mariam Mengistu, the former dictator of Ethiopia, sought treatment in a Johannesburg hospital and Human Rights Watch in New York, to their credit, heard about it, raised a hue and cry, and before South African authorities could do anything, Mengistu went scurrying back to Zimbabwe, where he had quite inappropriately been granted asylum by the government of Robert Mugabe.

---

*There's no difference between lawlessness and criminality  
in the international community and lawlessness and criminality  
within the borders of a country.*

---

It's interesting how these oppressive leaders, people responsible for the murders of thousands of people, for the rape of thousands of women in many cases, how they all want for themselves the best medical treatment they can find. They also want the best holiday resorts to go to when they want a vacation. It's coming to an end. Those people cannot travel to the extent that they used to. If I were a former oppressive leader, I would have to content myself with medical treatment and vacations at home. It's bad news for the travel agents but I would suggest it is good news for humankind.

That has a chilling effect, there's no question, on the commission of gross human rights violations in many cases, not all. You've had over the last 50 years, in the second half of the 20th century, this growth of international law, international humanitarian law, human rights conventions, universal jurisdiction, and it has made a difference. I've little doubt that the sorry history and the horrible statistics I gave you would be a lot worse but for these developments.

It shouldn't surprise anybody. There's no difference between lawlessness and criminality in the international community and lawlessness and criminality within the borders of a country. The weaker your criminal justice system, the weaker law enforcement is, the higher your crime rate will be. The more efficient your policing is, the more efficient the criminal justice system, the lower the crime rate will be. And there is no exception to that in any country and we all know that. It's no different in the international community. International terrorism should more properly be called international criminality. Terrorists murder and they plunder, they money launder, they get involved in drug trafficking because they are criminals. These are criminal acts and they're not going to be stopped until there is an efficient criminal justice system in the international community. Whether it is countries making war against each other or countries getting together to outlaw international crime, it's not going to work without some form of rule of law in the international community. What's applicable in domestic situations within international borders is no different in respect to international communities.

To get back to the United Nations, if the United Nations didn't exist today, it would have to be invented. The international community cannot exist without some form of international government, some arena for governments and their representatives to get together to discuss the issues which are plaguing the international community. It's not only war; it's the spread of AIDS and drugs and all the other things that the United Nations and its organs do. That's recognized generally in virtually all the governments around the world.

But there are problems with the United Nations Charter. One of the problems is that the Charter doesn't reflect the world of 2003. It reflects the world of 1945. Why should, of the European powers, the United Kingdom and France be permanent members? Why not Germany? Japan is the second biggest contributor of funds to the United Nations. Why should it not be a permanent member of the Security Council? Why not a single Latin American country? Why not a single African country being a permanent member of the Security Council? It really doesn't make sense but it's not going to change because the present permanent members are not going to allow it to change,

certainly not in the foreseeable future. It's a problem that we have to face up to and the international community has to accept.

One of the outcomes of that impasse is the incapacity in many desperate situations for the Security Council to get its act together. It was the problem with Kosovo. In the report of the International Independent Commission on Kosovo, we agreed unanimously that the NATO attack on Serbia to protect the human rights of the Kosovo Albanians was illegal. It wasn't in self-defense, clearly. Milosevic's government wasn't threatening anybody outside his own province of Kosovo—no question of self-defense—and the Security Council wasn't approached for its consent, for its authority for that war on Serbia.

The Security Council wasn't approached for a good reason. The United States and its allies knew as a certainty that Russia and China, Russia in particular, would have vetoed any action against Serbia. So they decided to bypass the Security Council and use military force to protect the fundamental human rights of the Albanian Muslim population of Kosovo. Our commissioners unanimously held that to be illegal because it didn't justify the two exceptions to which I referred at the beginning of my talk. It relied on a new concept of humanitarian intervention. It developed a new justification for using military force, where the sole purpose is to protect the human rights of people being violated by their government. The Commission said that if international law is wanting and that if it is not working in this respect, then there is something wrong with the law and it needs to be developed. It needs to be changed. Laws change all the time. New laws have been drafted to cope with the Internet, something new. Laws have been changed to deal with international banking on the Internet, with drug trafficking across borders. Borders have become porous. It is very difficult to control who comes in and out of many countries, a problem the United States, together with many other countries, is grappling with right now.

So, if the law needs to be changed, sensible people sit around the table and talk about changing the law. That's what happens in your country. If the law needs to be changed, you have investigations, you have lawyers, you have

medical people if it's a medical problem, and you have accounting people if it's an accounting problem, and your Congress investigates and the laws are changed. That's how I would suggest it should work in the international community. If the law needs to be changed it should be done in a rational, planned way and not simply ignored.

---

*If the law needs to be changed it should be done in a rational,  
planned way and not simply ignored.*

---

The Kosovo Commission suggested that the General Assembly of the United Nations should set out the principles that should apply to justify humanitarian intervention such as that which happened in Kosovo. We set out three threshold principles. Firstly, a severe violation of human rights at a level that is unacceptable to the international community, as was in the case Kosovo. Ethnic cleansing is a horrible concept; people are displaced or "cleansed" from areas because of their religion or the color of their skin or whatever. Those severe human rights violations should be the first threshold and it should be on a sustained basis.

The second threshold principle, the Commission said, was that the overriding aim of all phases of the intervention must be to protect the people who are being threatened. And the third, we said, was that the method of the intervention must be reasonably calculated to end the humanitarian catastrophe as rapidly as possible and must specifically take measures to protect all civilians and preclude any secondary punitive or retaliatory action against the target government. We set out a number of contextual thresholds as well. I won't bore you with all of them, but briefly, we said that the use of military force must literally be the last resort, that all forms of diplomatic intervention must first be exhausted. And we suggested that we didn't have all the answers. We said that these were issues that should be discussed by the United Nations General Assembly and that there should be some new thresholds and some new laws developed.

---

*There is no doubt that the events of September 11 created a new concept of democracy that differs from the concept that western states defended before these events, especially with respect to the freedom of the individual.*

---

Unfortunately, it hasn't happened. I was personally horrified when some leaders in the United Kingdom in particular and, to a lesser extent in a more muted fashion in Washington, D.C., tried to use the Kosovo report to justify the war on Iraq. Some leaders said this was a humanitarian intervention that was designed to protect the human rights of the Iraqi people. Of course that was nonsense; it flew in the face of all of the reasons that were given by President Bush and Prime Minister Blair for that war. I don't say that the human rights of Iraqi people were irrelevant, but it certainly was way down on the agenda of the leaders of the United States and the United Kingdom in justifying to their people the reasons for going to war. And of course it wasn't a humanitarian intervention. There were very mixed motives in that war. It was a convoluted approach to international terrorism, to oil, to many things that were important to the coalition that went into that war.

The unilateral action of the United States has resulted in what Kofi Annan, the Secretary-General of the United Nations, very recently talked about—another fork in the road of humankind. He didn't refer to the end of the Second World War in that context but I'm sure he would agree. The international community decided to go the United Nations route. It was something new and there was general agreement that the only way to avoid deadly conflict of the magnitude of that suffered by humankind in the Second World War was through the rule of law, that the legality of countries resorting to military might must be limited, must be constrained in some sensible way. And the fork in the road now is whether to abandon that and to allow powerful nations to do what they wish, to attack sovereign nations if they will without any constraints, without any justification recognized by the international community.

If powerful nations can do that, what's to stop weaker nations from doing it in their regions? Of course there is a knock-on effect. I commend to you, those of you who haven't read it, a very recent report by the Lawyers Committee for Human Rights in New York. In one of the chapters of their report, they deal with the United States and international human rights. They refer to the fact that the United States' State Department put out a report on the human rights record of every nation in the world but one, the United States. It is a good report; it has had very good results and good consequences. Governments don't like being criticized in that State Department report. Many governments are constrained by that report. However, until I read the report, I did not know that the ambassadors of the United States were instructed not to report human rights violations if they were committed either at the request or with the knowledge of the United States government.

In that same report, one reads that Egypt has passed even more draconian laws allegedly to fight terrorism. Egypt's President Mubarak declared that the new United States policies "proved that we were right from the beginning in using all means, including military tribunals, to combat terrorism." There is no doubt that the events of September 11 created a new concept of democracy that differs from the concept that western states defended before these events, especially with respect to the freedom of the individual. For example, you see the approach adopted by the Bush administration trying to justify completely unjustifiable restrictions, such as detention without trial for very long periods.

Charles Taylor, before he ignominiously left Liberia, used the term "unlawful combatant" to arrest and torture innocent journalists. In November 2001, President Mugabe of Zimbabwe claimed that foreign correspondents, including American correspondents, were terrorist sympathizers for reporting on political attacks against white Zimbabweans. His spokesman insisted that it was an open secret that such correspondents were assisting terrorists and distorting the facts. He then said the following, "As for correspondents, we would like them to know that we agree with United States President Bush that anyone who in any way finances, harbors, or defends terrorists is himself a

terrorist. We too will not make any difference between terrorists and their friends and supporters. This kind of media terrorism will not be tolerated.”

A third illustration from this report relates to Indonesia. The government there announced in May that it was intending to build a Guantanamo Bay-like island detention camp to house prisoners in its long-standing struggle against armed separatists in northern Sumatra.

I’m not suggesting that these evil leaders are doing what the United States is doing. But what I am saying is that when the most powerful nation in the world acts in this way, it’s going to be misused and it’s going to have a knock-on effect in undemocratic and other democratic nations. In the United Kingdom, in India, and South Africa, there are anti-terrorist laws either passed or on their way to being passed that in my view go too far.

In the International Bar Association report, we recognized very clearly the right, and indeed the duty, of all governments to protect their citizens. Obviously, that’s one of the first, probably the most important obligations of government, to protect their citizens. But to use that obligation and duty to put powers in the hands of the executive without any oversight, to allow for detention without trial, secret deportation hearings, keeping people for now nearly two years in confinement in Guantanamo Bay, cannot be justified. I can’t believe it takes two years to debrief people, to interrogate people. And what puts the fear into me is the knock-on effect that the United States has on other countries. The United States is the leader, has always been proud to be the leader of the free world. That carries with it a serious obligation to be an example to other nations.

I’m optimistic. The pendulum swings. Democracies haven’t done too well in the past in times of fear and in times of war. President Reagan apologized to Japanese-Americans for what was done to them in the Second World War, one of many examples of an overreaction, but the pendulum slowly swings back and it’s happening now. In the United States there is much more open criticism of the sorts of laws and practices to which I have referred. In the first twelve months after 9/11, people were frozen. They were pessimistic

and they were frozen by fear into inaction. The threats from the Attorney General that anyone who opposed the government’s policy was being unpatriotic and aiding the terrorists are no longer current. There is no currency for that sort of talk and that sort of fear.

So it’s loosening up and I think that the presidential election next year is going to be an interesting one in that respect. I feel privileged in being able to spend most of the next year in the United States because this is a very open society. You know, this is the only society in which a foreigner like me can come and say the things I’ve just said without causing resentment. I wouldn’t want to say these things in London or Paris. I don’t think I would be able to do it without measuring my words a great deal more than I have this evening. The United States is a very open society and civil society in this country makes a difference. The laws related to military commissions were changed drastically between November 2001 and March 2002 because civil society—the American Bar Association, human rights groups, civil rights groups, and town hall meetings—objected. They said this is not the way we should be dealing with military commissions and the laws were changed by the Bush administration. So it is an institute like this, it’s people like you who make a difference and that’s what democracy is all about.

---

*We should not ever allow ourselves in democracies to fall  
for the belief that the rights we accord to our citizens are a  
weakness that need to be limited in order to fight terrorism.*

---

Let me end on this note. We should not ever allow ourselves in democracies to fall for the belief that the rights we accord to our citizens are a weakness that need to be limited in order to fight terrorism. It’s the strength of democracies. It’s what has made democracies great. It’s what has made this country the leading nation that it is. It is the values over the last centuries that it has built up, that have been a light to other democracies. It is civil society

that has to insist that those values be adhered to. So I'm optimistic because I think the people of this country and the other democracies, the European democracies, are not going to fall for methods and are not going to adopt practices that really would be giving a gift to the terrorists. What is bin Laden objecting to in the United States? It is your democracy, your freedom. It's your freedom for women in particular that is objectionable to people of the ilk of bin Laden. And I suggest that he shouldn't be given a gift by democracies themselves assisting him in subverting these values that have made this nation the great nation that it is. Thank you very much.





## QUESTIONS AND ANSWERS

**Q. One thing you didn't touch on was the establishment of the International Criminal Court and the U.S. not signing onto the Court and instead, in fact, the current administration taking the unprecedented step of pressuring countries to sign bilateral agreements which subvert the International Criminal Court. To what extent do you think this will affect any system of international law?**

A. First of all, let me say that certainly, in my strong view, the attitude of the United States towards the International Criminal Court is nothing short of a tragedy. And it's an ironic one too because, as I mentioned earlier, it was the United States' push that gave birth to the ad hoc tribunals for the former Yugoslavia and Rwanda. What I didn't add was that it was the United States that led to the foundation of the International Criminal Court. It was the Clinton administration in 1998 and then-Secretary of State Madeleine Albright who encouraged Kofi Annan to call the diplomatic conference in Rome, which gave birth to the International Criminal Court.

It was virtually on the way to Rome that the Clinton administration changed its mind and decided that the International Criminal Court was a bad idea unless the United States could control it. The United States' demand was that the International Criminal Court should not be allowed to have an investigation or to indict anybody without the consent of the Security Council. Why the Security Council? Because the United States could veto any investigation it didn't like. It was prepared to give the same right obviously to the other four permanent members. And really, what's the point of having that sort of political court that's controlled by a gatekeeper in New York that would be a political gatekeeper. No justice system can work that way. Imagine in your own country if prosecutions could only be instituted with the consent of the White House or the Congress, if prosecutors had first to get the consent of politicians before they could indict anybody on serious crimes. That is a fair analogy.

I'm cautiously optimistic. I think there is a critical mass of nations that are behind the court. Ninety-one nations thus far have ratified it. The assembly of states that controls this court consists of 91 nations, which include every single member of the European Union. It includes all of the democracies in the Commonwealth. It includes 15 countries in Africa and many countries in Latin America. Significantly, it's the "evil" countries that have not joined up. It shouldn't surprise anybody but they haven't. And regrettably, that's the company the United States is keeping. The United States is joined with Syria and Yemen and Qatar. Only one member of the Arab League, Jordan, has so far ratified the International Criminal Court treaty.

The question is whether or not it is going to succeed without the support of the United States. The people who were arrested at the behest of the Yugoslavia tribunal would not have been arrested, for the most part, without the United States' pressure, the threat of withdrawing economic assistance, the threat of withdrawing or not supporting IMF or World Bank loans. The ten Croatian generals who handed themselves over only did so because they were told what would have happened to themselves and their families if they didn't. Milosevic himself was only handed over because the United States threatened to withhold \$1.2 billion of aid to the new government of Zoran Djindjic in Belgrade. So the issue is whether the International Criminal Court is going to succeed in functioning without the support of the United States. Financial support I don't think is relevant. I think the 91 nations that have ratified are able, in particular the European nations, to fund a court which doesn't cost too much. But it's the political muscle that's going to be missing.

Whether it succeeds or not, I believe, is going to depend on where it begins. We know already from the new prosecutor, Mr. Luis Moreno Ocampo, that it is going to begin in the Congo. That's good. The United States is not going to get tremendously excited about war crimes investigations in the Democratic

Republic of the Congo. It's not going to impinge in any way on the interests, political or economic interests, of the United States. My hope is that if the court functions efficiently in the next four or five or ten years, eventually the United States will join. It will join because its almost irrational fears of an anti-United States court, biased judges, and runaway prosecutors are not going to be justified. The judges have been elected and they are well respected lawyers. The prosecutor is a sensible Argentinean lawyer who taught last year at Harvard Law School. He's not the runaway prosecutor that the Pentagon in particular feared. The United States will come onboard because it won't wish to continue to remain in the company that it's keeping in opposing the work of the International Criminal Court. Again, I have little doubt that the people of this country will eventually want their government to join in to withdraw impunity for war criminals. With democracies, if enough people want it, it will happen.

**Q. Has the U. S. breached the Geneva Conventions and, if so, should it come before the ICC?**

A. I've seen no evidence of the United States having breached the Geneva Conventions. Accepting that the war in Iraq was illegal, that's not a war crime. It shocks a lot of people but making war illegally is not a war crime. I always compare it to the laws of boxing, the so-called sport of boxing. The Queensbury Rules try to make boxing a civilized affair, like the laws of war try to make war a civilized affair. The laws of boxing are only triggered when the bell goes for the first round and two men (and these days, women) get into a ring and try to knock each other senseless. The laws of war also only begin to apply when the war begins. That's what the Geneva Conventions and the Hague Conventions are about.

Now it's interesting, and I'm grateful for the question, because the war crimes tribunals have made a difference. At least the good nations, the democratic nations, pay more attention to the Geneva Conventions than they ever have. In the Kosovo war, in the war against the Taliban in Afghanistan, and in the Iraq war,

every single day you and I read about the military leaders of the United States, Great Britain, and in Kosovo, the NATO nations, all taking steps to protect innocent civilians. In Kosovo, after 78 days of bombing, how many civilians were killed? Fewer than 2000. Remarkable. Huge, huge bombings for 78 days. In Afghanistan, steps were taken to protect innocent civilians in towns and cities.

Mistakes may have been made. The bombing of the bridge in the Kosovo campaign on which there was a passenger train—possibly a war crime, depending on a lot of factors. As the former prosecutor, I certainly wouldn't make a judgment without knowing all the facts. The bombing of the television studio was possibly a war crime. On a scale of one to ten, compared with what the Serbs did to innocent Kosovar Albanians, which were nines and tens, if mistakes were made by the United States and its allies in the Kosovo war and Afghanistan and Iraq, it may have been ones and twos. If I was an international prosecutor today, I certainly wouldn't set my sights on any possible war crimes committed by the forces of the United States or its allies.

**Q. What is your opinion on the “lesser evil” approach to foreign policy? Is it ever justified? Is it not better to back a totalitarian regime than allow a radical religious government to take charge?**

A. I don't like labeling people. I think it's dangerous. One sees policies changing. Just as one saw the United States supporting the Taliban to enable them to fight the Russians in Afghanistan, your enemy of today is your friend of tomorrow. It seems to me that any sensible foreign policy must be consistent. I think it is events and behavior that should be condemned. If it's by your friends, so be it. If it's by your enemies, well, it's more comfortable.

**Q. If international law cannot bring those who sponsor murder and rape to justice, is assassination a viable alternative to war if it would ultimately save lives?**

A. I don't believe in any justification for governments sponsoring murder under

any circumstances. Again, there's a knock-on effect. I was horrified when I read of one of the senior American generals in Iraq saying that if they found Saddam Hussein, he would be arrested, but, he added "but if it was up to me, we'd kill him." That's a horrible statement to make and it was followed very soon by a statement by an Israeli official that Yasser Arafat should be murdered. You see the example that's been set. I don't believe that, prior to Iraq, the deputy prime minister of Israel would have dared to make such a statement and not been criticized for it by an American president. When I was the prosecutor at The Hague, I remember being approached with a genuine question, and a fair question, from the United States Department of State. They asked what my attitude was toward the United States putting up reward money for the arrest of war criminals. I said, "I've got no objection to it, but I'll tell you now, and my successors may differ, but I'm not prepared as prosecutor to accept into my custody anybody who's been illegally arrested." I said an international criminal tribunal cannot afford to get involved in that sort of business.

I think the international community must have standards. If someone has committed the most heinous war crime, he or she must be arrested and brought to court. It is unacceptable for Israel or the United States or any other country to be permitted to murder foreign leaders.

**Q. How can a tribunal like the International Criminal Tribunal for the former Yugoslavia be held to be credible when an American citizen sitting as a judge holds up a standard of command responsibility that is not enforceable on citizens of her own country?**

A. I'm not sure that's right. I think that command responsibility is now recognized universally. It's an accepted norm. To the best of my knowledge, the United States military teaches and accepts command responsibility. It was certainly the law that was applied at Nuremberg. I have no doubt at all that the military colleges and the military leaders in

the United States do accept command responsibility—the principle that if you are in a position of command and you either order or know that war crimes are going to be committed and don't stop them, then you as commander are responsible for those crimes.

**Q. Do you see how the human rights issues will be resolved in the Israeli - Palestinian confrontation?**

A. I must say it's very difficult to be optimistic about the Middle East at the moment. There seems to me to be a complete absence of credible leadership on both sides. We were very fortunate in South Africa; we had good leaders. I talked earlier this week in Illinois about things I have learned. One of them is the tremendous power that leaders have, for good or evil. We tend to concentrate on the evil leaders, on the Hitlers and the Stalins and the Milosevics and the Saddam Husseins. But we should spend more time considering good leaders: the Mandelas, the Roosevelts, and the Churchills, many great leaders who have brought good things to their people and to humankind. Here, too, I think the issue inherent in the question is the need for good leadership.

**Q. You mentioned that the U.N. Charter of 1945 does not reflect 2003 values. Should the U.S. Constitution of 1887 be changed to reflect 2003 values?**

A. You know, the genius of the United States Constitution is its brevity. It really is. The United States Constitution has been able, by sensible and intelligent judges, to be updated. Some judges have tried to reverse that trend, looking at "original intent." In South Africa, we laugh because some of the judges on the court on which I sat were responsible for the drafting of the Constitution, so the founding fathers are sitting on the court at the moment, which is very pleasant.

But the South African Constitution is one of the longest constitutions. We've

taken the best we could learn from the United States, from Canada, from Germany, many other democracies. We're going to have more trouble over the next 50 or 100 years. Our Constitution is going to have to be amended because it's going to become outdated. I think the United States Constitution hasn't become outdated because of its flexibility and because of the ability of judges to change it, whether it was *Brown v. the Board of Education* reversing 100 years of laws or even *Lawrence v. Texas*, the recent judgment of Justice Kennedy, the majority judgment reversing the criminalization of sodomy in Texas that now applies throughout the United States, reversing a decision that wasn't 20-years old. That's something to be grateful for. I think judges don't do it easily and they don't do it wantonly but as community standards change, so the laws have to change and your Constitution allows that to happen.

**Q. What factors give you the confidence that South Africa will not follow the ruinous path taken in Zimbabwe—political, judicial, and economic?**

A. There really is no comparison for many reasons. The question always evokes in me the hypothetical question being put to someone in Holland in 1938 saying, "Is Holland going to go the way of Nazi Germany?" That would have been as relevant a question as asking whether South Africa is going to go the way of Zimbabwe.

Firstly, we have different kinds of leaders. Let me tell you an anecdote. In 1980, I was counsel in a case in Zimbabwe. It was a long trial. I was in court early one morning preparing a cross-examination. The judge came in and he came up to me and he said, "Would you do me a favor?" And I looked quite surprised and I said, "What can I do for you, Judge?" And he said, "I've had a surprise visit from our new Minister of Justice." This minister had been appointed by Mugabe, who had just won this bloody war and had become the first democratic leader of Zimbabwe. I looked quizzical and he said, "The problem is this minister has been with me for 20 minutes and we've run out of conversation and I thought I'd find someone and I saw you in court. Won't you come and join me?"

So I went in and I met the Minister and I said, "What brings you to court?" He said, "Well, you know I'm not a lawyer and I've never been in a court. I've been a freedom fighter. I don't know what happens in courts, and I thought I should come and see what court is all about as Minister of Justice." And I said, "What have you learned?" He said, "Well, the one important thing I have learned is that judges use books. I see that it is necessary to have money for a library."

Now, I tell you the story because in South Africa our new leaders, whether it was Nelson Mandela himself or the members of his cabinet or the members of the present cabinet, grew up not only as freedom fighters but also as leaders of a national and international human rights campaign. The Mandela government and his party insisted on a Bill of Rights for South Africa. The Universal Declaration of Human Rights, as I've said, was their bible. It was literally carried around with them in their back pockets. They wanted a democracy and they wanted a Bill of Rights.

The white leaders, de Klerk and the former apartheid leaders, converted literally overnight. They had oppressed people. Human rights to them was a swear word. But when they saw the writing on the wall and when they saw there was going to be black majority rule in South Africa, all of a sudden they became converts to a Bill of Rights. They saw in a Bill of Rights their protection, the protection of minorities.

So we were lucky. All our leaders, black and white, coming from opposite corners, wanted a Bill of Rights. And it's there. It's the Bill of Rights of the current government; it's their document; it's their Constitution. And they carry out orders of our court even if they are embarrassing and even if they cost money, it's done. So, that's one difference between South Africa and Zimbabwe.

The other, probably as important, is that we don't have the land problems that Zimbabwe has. Our Constitutional Court handed down a landmark judgment the day before yesterday ordering restitution or damages to a Khoisan tribe in

the Northern Cape, a tribe going back centuries before whites ever came to Africa. Their land was taken away in the 1920s when alluvial diamonds were found and the South African government suddenly found that huge areas of this useless land were valuable.

Our Constitution provides that where land was confiscated for racially discriminatory reasons since 1913, people are entitled to restitution. The government opposed this because the rights had been given to a government diamond company. And the court has said to the South African government, "You have to give that land back or pay compensation." There are billions of dollars involved and the government will carry out the order. The comparison with Zimbabwe, I'm happy to say, is just not on.

**Q. What is the U.S. course of action regarding the Guantanamo Bay detainees?**

A. I've already referred to it briefly in passing. It's really unacceptable. Imagine the attitude of your government if some of your citizens were put in some prison on the Isle of Man and kept for two years incommunicado, no access to their families. I'm not surprised that the attempted suicide rate on Guantanamo Bay is as high as it is. I think I read in the last week 32 suicide attempts by 22 of the detainees on Guantanamo Bay.

In South Africa we had a system in the 1980s of detaining people without trial. I was privileged to visit many of those detainees and bring them reading material and arrange visits to their families. I can say with absolute certainty, I would prefer to have a five-year prison sentence than to be kept for five weeks without trial. Not knowing if and when one will be charged or released is a terrible way to undermine the human spirit and to induce hopelessness, and it is even worse with solitary confinement.

One of the complaints of the detainees when I visited them in South Africa was that they hadn't been interrogated. They said, "Why haven't I been

interrogated? My neighbor here has been." Why did he want to be interrogated? He feared his name had dropped off a list and he'd be there forever. He'd been forgotten by the bureaucracy. It's a very cruel punishment and I just can't imagine what people must be feeling there for having been kept in excess now of two years outside the purview of courts.

I cannot understand how United States federal courts, and I just hope it's reversed in the Supreme Court, are saying that what the United States military is doing in Guantanamo Bay is outside the purview of the federal courts because the detainees are not in the United States. I mean the corollary is that the only courts that have jurisdiction are the courts of Cuba! That's what this means. And I would hasten to agree with some of the most senior judges in England by criticizing the United States and saying they can't understand why the United States courts don't exercise jurisdiction over what the United States army is doing on Guantanamo Bay.

**Q. How will we convince Americans that we need to safeguard human rights when there is another terrorist attack?**

A. As I've indicated, and this was the unanimous finding of the International Bar Association report, which as Dr. Neu mentioned we made public in Washington, DC last Friday, it's a question of balancing and proportionality. Greater powers need to be given to policing authorities to fight international crime. But there should be oversight. People shouldn't be held unaccountable. Everybody, anybody in public office should be accountable. Judges are accountable and lower courts are to higher courts. The highest courts are accountable to Congress and, in extreme cases, there are impeachment provisions. But above all, judges are accountable to the public. Judges have to give reasons in public for what they order and, if they go off the rails, they're going to be criticized in a democracy, in the media, in law journals, academia. So there is accountability.

The problem at the moment, it seems to me, in most of the democracies, is that the executive is arrogating to itself powers that are not subject to any oversight, either by Congress or by the courts. And if you give anybody powers without making them accountable, you can be sure they're not only going to use those powers, but they are going to misuse those powers. The importance of accountability isn't actually the check, the investigation. The importance of accountability is that if people with power know that they're going to be reviewed, this is an effective check.

**Q. Would it be a good or bad idea for Belgium to try Henry Kissinger for war crimes?**

A. I don't like the idea of Belgium arrogating to itself the work of an International Criminal Court. In some cases, it's better than nothing. In my book, there are three divisions of international criminal justice. The first division is countries trying their own citizens, and the International Criminal Court makes provisions for that. The first bite of the cherry is given to the national courts of alleged war criminals. If the country of citizenship doesn't want to do it, or cannot do it, or does it dishonestly, then the jurisdiction goes to the International Criminal Court: first division, national court; second division, international criminal courts.

The third division is nations, such as Belgium's universal jurisdiction. It's better than nothing; I prefer that to impunity. I prefer that to criminals getting away with it. But again, I think it's a reason for a country like the United States

---

*“And if you give anybody powers without making them accountable, you can be sure they're not only going to use those powers, but they are going to misuse those powers.”*

---

---

*“I don't believe that you can have any lasting peace without justice in the aftermath of serious human rights violations.”*

---

to get on board with the International Criminal Court, because the wider the jurisdiction that court has, the less room there is going to be for Belgium and other national courts getting into the act.

**Q. Briefly describe the role of memory in the pursuit of justice.**

A. That is an important question and especially one on this platform because I know that reconciliation and acknowledgement are important to this center. I don't believe that you can have any lasting peace without justice in the aftermath of serious human rights violations.

If you look at the trouble spots, if you look at the Balkans, if you look at Rwanda, you will find a history of no accountability, of no accounting for human rights violations. You will find societies with revenge being built in to oral histories. If you have that in your society, if you have, as in the case of the Balkans, hundreds of years of violence, one group against the other, no accountability, no investigations, you get what you have in the Balkans—all three of the main groups regarding themselves as victims and regarding the other two as perpetrators. And that's reciprocated. It's really the fuel (I've referred to it before as the “toxic fuel”) which enables evil leaders like Milosevic to use that revenge in order to build up to the sort of ethnic cleansing and other war crimes that we've seen committed.

In South Africa, the South Africans in the audience, including our Consul General in Los Angeles, may agree, but certainly in my view, in South Africa the greatest gift of our Truth and Reconciliation Commission is giving our

nation one history of what happened during the apartheid era. And that's a great gift. Without the Truth and Reconciliation Commission, we'd have at least two histories. There would be a white history, based on denial and embarrassment, but above all denial. And there would be a black history, which would be more or less accurate because the victims know what happened to them. The area which we have for reconciliation and for building, for spending mostly white taxpayer's money on building up blighted black areas, depressed areas, is easier in light of the Truth Commission demonstrating to our nation the unfairness, the gross unfairness of the apartheid system. There is no substitute in my view for acknowledgement and laying bare the facts of human rights violations.

## RELATED RESOURCES

*Disclaimer: The Joan B. Kroc Institute for Peace & Justice takes no responsibility for the content of the selected sites or publications, nor does inclusion imply endorsement of the views presented.*

---

### WEBSITES:

William J. Aceves' Faculty Webpage with international law links including comparative law, European Union law and human rights law. Retrieved May, 2004, from:

<http://www.cwsl.edu/main/default.asp?nav=faculty.asp&body=aceves/home.asp#weblinks>

Amnesty International. Retrieved May, 2004, from:

<http://www.amnesty.org/>

AMICC website. Non-governmental organizations committed to promoting the development of international criminal law. Retrieved May, 2004, from:

<http://www.amicc.org/resources.html>

Crimes of War. Collaboration of lawyers, journalists, and scholars dedicated to raising public awareness of the laws of war. News, resources, links.

Retrieved May, 2004, from: <http://www.crimesofwar.org/>

Global Policy. Special International Criminal Tribunals. Retrieved May, 2004, from: <http://www.globalpolicy.org/intljustice/tribindx.htm>

War Crimes Research Office of the American University Washington College of Law links. Retrieved May, 2003, from:

<http://www.wcl.american.edu/warcrimes/resources.cfm>

## BOOKS:

Barkan, E. (2000). *The guilt of nations: Restitution and negotiating historical injustices*. New York: Norton.

Bass, G. (2000). *Stay the hand of vengeance: the politics of war crimes tribunals*. Princeton, NJ: Princeton University Press.

Best, G. (1994). *War and law since 1945*. Oxford: Clarendon Press.

Brownlie, I. (1963). *International law and the use of force by states*. Oxford: Clarendon Press.

Cassese, A., et al., eds. (2002). *The Rome Statute of the International Criminal Court: a commentary*. Oxford: Oxford University Press.

Devine, C., & Hansen, C. R. (1999). *Human rights: the essential reference*. Phoenix, AZ: Onyx Press.

Falk, R. A., Kolko, G., & Lifton, R. J. (1971). *Crimes of war: a legal, political-documentary, and psychological inquiry into the responsibility of leaders, citizens, and soldiers for criminal acts in wars*. New York: Vintage Books.

Goldstone, R. J. (2000). *For humanity: Reflections of a war crimes investigator*. New Haven, CT: Yale University Press.

Gutman, R., ed. (1999). *Crimes of war: What the public should know*. New York: Norton and Company.

Meron, T. (1986). *Human rights law-making in the United Nations: a critique of instruments and process*. Oxford: Oxford University Press.

Minow, M. (1999). *Between vengeance and forgiveness: Facing history after genocide and mass violence*. Boston: Beacon Press.

Ratner, S., & Abrams, J. (2nd ed. 2001). *Accountability for human rights in international law: Beyond the Nuremberg legacy*. Oxford: Oxford University Press.

Robertson, G. (2000). *Crimes against humanity: the struggle for global justice*. New York: New Press.

Roht-Arriaza, N., ed. (1995). *Impunity and human rights in international law and practice*. Oxford: Oxford University Press.

Sadat, L. N. (2002). *The International Criminal Court and the transformation of international law: Justice for the new millennium*. New York: Transnational Publishers.

Tanaka, T. (1996). *Hidden horrors: Japanese war crimes in World War II*. Boulder, CO: Westview Press.

Taylor, T. (1992). *The anatomy of the Nuremberg trials: a personal memoir*. New York: Knopf.



## ABOUT THE UNIVERSITY OF SAN DIEGO

Chartered in 1949, the University of San Diego is a Roman Catholic institution of higher learning located on 180 acres overlooking San Diego's Mission Bay. The University of San Diego is committed to promoting academic excellence, expanding liberal and professional knowledge, creating a diverse community, and preparing leaders dedicated to ethical and compassionate service.

USD enrolls nearly 7,000 undergraduate and graduate students in more than 60 degree programs in academic divisions including the College of Arts and Sciences and the schools of Business Administration, Education, Law, and Nursing and Health Science. A School of Peace Studies, funded by a \$50 million gift from the late Mrs. Joan B. Kroc, is in development.

USD is committed to examination of the Catholic tradition as the basis of a continuing search for meaning in contemporary life. Global peace and development and the application of ethics and values are examined through campus centers and institutes such as the Joan B. Kroc Institute for Peace & Justice, the Values Institute, the TransBorder Institute, the Center for Public Interest Law, the Institute for Law and Philosophy, and the International Center for Character Education. Furthermore, through special campus events such as the Social Issues Conference, the James Bond Stockdale Leadership and Ethics Symposium, and the Joan B. Kroc Distinguished Lecture Series, we invite the community to join us in further exploration of these values.

In recent years, the University of San Diego has hosted many distinguished guests including Nobel Peace Laureates and former Presidents Jimmy Carter and Oscar Arias, Supreme Court justices, United Nations and United States government officials as well as ambassadors from countries around the world. In 1996, the university hosted a Presidential Debate between candidates Bill Clinton and Bob Dole.

The USD campus, considered one of the most architecturally unique in the nation, is known as Alcalá Park. Like the city of San Diego, the campus

takes its name from San Diego de Alcalá, a Franciscan brother who served as the infirmarian at Alcalá de Henares, a monastery near Madrid, Spain. The Spanish Renaissance architecture that characterizes the five-century old University of Alcalá serves as the inspiration for the buildings on the USD campus. The architecture was intended by the founders, Bishop Charles Francis Buddy and Mother Rosalie Hill, to enhance the search for truth through beauty and harmony. Recent additions, such as the state-of-art Donald P. Shiley Center for Science and Technology, carry on that tradition.

A member of the prestigious Phi Beta Kappa, USD is ranked among the nation's top 100 universities. USD recognizes that rigorous academic challenge is only part of a holistic education. At USD, students, faculty, and alumni are encouraged to develop knowledge, values, and skills to enrich their lives and to benefit their civic, global, and faith communities.



## BE A PEACEMAKER.

### Support the Joan B. Kroc Institute for Peace & Justice.

You can support the educational, research and peacemaking activities of the Joan B. Kroc Institute by making a secure, tax-deductible, online donation at <http://peace.sandiego.edu> or mailing the donation form below to:

Joan B. Kroc Institute for Peace & Justice  
University of San Diego  
5998 Alcalá Park, San Diego, CA 92110-2492

-----  
☐ I would like to join the Institute's Leadership Circle with a gift of \$1000 or more and receive invitations to special receptions and events.

☐ Enclosed is a check for my gift    ☐ See credit card information below

☐ I would like to support the Institute's programs with a gift of:

☐ \$500    ☐ \$250    ☐ \$100    ☐ \$50    Other \$ \_\_\_\_\_

☐ Enclosed is a check for my gift    ☐ See credit card information below

Please charge my credit card: ☐ American Express    ☐ Discover    ☐ Master Card    ☐ Visa

Acct. # \_\_\_\_\_ Exp. \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip/Country \_\_\_\_\_

Phone (Day) (\_\_\_\_\_) \_\_\_\_\_ (Eve) (\_\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

☐ Please add me to your mailing list for information about Institute programs and upcoming events.



JOAN B. KROC  
INSTITUTE FOR  
PEACE & JUSTICE

For more information or additional copies contact:

**JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE**

UNIVERSITY OF SAN DIEGO  
5998 Alcalá Park, San Diego, California 92110-2492  
T 619.260.7509 F 619.260.7570  
<http://peace.sandiego.edu>



University of San Diego